BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JOHN TEIGEN	)	
Claimant	)	
VS.	)	
	)	Docket No. 251,237
TOPEKA RESCUE MISSION	)	
Respondent	)	
	)	
and	)	
	)	
BROTHERHOOD MUTUAL INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Claimant appealed the December 12, 2001 Award entered by Administrative Law Judge Bryce D. Benedict. The Appeals Board (Board) heard oral argument on June 4, 2002.

Appearances

Paul D. Post of Topeka, Kansas, appeared for the claimant. Matthew S. Crowley of Topeka, Kansas, appeared for respondent and its insurance carrier.

Record and Stipulations

The record considered by the Board and the parties' stipulations are listed in the Award.

Issues

This is a claim for an October 2, 1999 accident that occurred while claimant was at respondent's voucher store, which is located in a separate building from where claimant generally worked.

Although claimant's accident occurred on respondent's premises, Judge Benedict held that the accident did not arise out of and in the course of claimant's employment with respondent. The Judge concluded that the "premises" exception to the "going and coming" rule[1] did not apply because claimant was not traveling to or from work, he had not assumed his work duties, he was not being compensated at the time of his accident and there was no business purpose to his activity. Instead, claimant was found to have been on a personal errand to obtain appropriate work attire.

Claimant argues that Judge Benedict erred by not finding that the premises exception to the going and coming rule applies to this claim and by not applying the dual purpose doctrine to claimant's errand to find the claim compensable.

Conversely, respondent contends that the Award should be affirmed.

The first issue before the Board on this appeal is whether the accident arose out of and in the course of claimant's employment. If so, and the claim is compensable, then the Board must determine the nature and extent of claimant's disability and the amount of compensation, including the amount of temporary total disability compensation, that is due claimant.

Findings of Fact and Conclusions of Law

Having reviewed the entire record, the Board makes the following findings of fact and conclusions of law:

The Board finds the Award of the ALJ should be affirmed. The Board agrees with the ALJ's analysis of the evidence as set forth in the Award. The Board adopts the ALJ's findings and conclusions as its own as if specifically set forth herein. Although claimant's accident occurred on the premises of the respondent, which is recognized as an exception to the going and coming rule, the accident, nevertheless, did not arise out of and in the course of his employment with respondent.

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[1] K.S.A. 44-508(f).

On October 2, 1999 claimant was injured in the respondent's voucher store. The purpose of this trip was a personal errand for claimant. As the ALJ found:

> On the day of his accident the Claimant arrived at work early, as was his custom. He arrived approximately a half hour before his shift was to begin. On this particular day he came wearing a sweater that was too short and admittedly inappropriate. He asked his supervisor for permission to go to the Respondent's voucher store and obtain a T-shirt to wear with the sweater. The supervisor allowed this, and the Claimant subsequently injured his shoulder in a fall at the voucher store.[2]

Claimant argues his accidental injury arose out of and in the course of his employment with respondent because he was on the respondent's premises and because the purpose of his trip or errand was for the mutual benefit of claimant and the respondent. Claimant's purpose in going to the voucher store was to make himself more presentable by obtaining a shirt more appropriate for work. Furthermore, by going to the voucher store instead of going home to obtain a shirt, claimant would avoid being late for the start of his work shift.

Respondent contends the premises exception to the going and coming rule is inapplicable because claimant was not on his way to work. Instead he had arrived for work early and was on a personal errand. Claimant's accident did not arise out of the employment because the purpose of claimant's trip was personal and not a part of his employment. Claimant's accident did not occur in the course of his employment because his work shift had not started and claimant was not being paid when the accident occurred.

"In general, courts construe the Workers Compensation Act liberally for the purpose of bringing employers and employees within the coverage of the Act.[3]

In order to receive workers compensation benefits, claimant must show that his accidental injury arose out of and in the course of his employment.[4] Whether an injury

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[2] Actually, Mr. Gassman was not claimant's supervisor. He was working at the desk which was the same job as claimant's and was the person claimant was there to relieve. In that capacity, Mr. Gassman had control of the keys to the voucher store which he allowed claimant to use.

[3] Butera v. Fluor Daniel Construction Corp., 28 Kan. App. 2d 542, 545, 18 P.3d 278, *rev. denied* ___Kan.___ (2001).

[4] See K.S.A. 44-501(a); Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 197, 689 P.2d 837 (1984).

arose out of and in the course of a worker's employment is a question of fact and depends upon the facts peculiar to that case.[5] In Newman[6] the Court stated:

> "The two phrases arising 'out of' and 'in the course of' the employment, as used in our workman's compensation act (K.S.A. 1972 Supp. 44-501), have separate and distinct meanings, they are conjunctive and each condition must exist before compensation is allowable. The phrase 'in the course of' employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase 'out of' the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and employment. An injury arises 'out of' employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises 'out of' employment if it arises out of the nature, conditions, obligations and incidents of the employment."[7]

But K.S.A. 44-508(f) provides, in part, the following:

> "The words 'arising out of and in the course of employment' as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence."

K.S.A. 44-508(f) "bars an employee injured on the way to or from work from workers compensation coverage."[8] "The rationale for the 'going and coming' rule is that while on the way to or from work the employee is subjected only to the same risks or hazards as those to which the general public is subjected. Thus, those risks are not causally related to the employment."[9]

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[5] Brobst v. Brighton Place North, 24 Kan. App. 2d 766, 955 P.2d 1315 (1997).

[6] Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

[7] Newman at Syl. ¶ 1.

[8] Chapman v. Beech Aircraft Corp., 258 Kan. 653, 655, 907 P.2d 828 (1995).

[9] Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 46, 883 P.2d 768 (1994).

The Act specifically recognizes both a "premises" and a "special risk" exception to the general rule. But case law creates other exceptions including when travel is an integral or inherent part of the job, when the travel is for a special business purpose and when employees are paid for their travel time and/or expenses.

The Kansas Court of Appeals in Brobst reiterated that accidents occurring while going and coming from work are compensable where travel is either (a) intrinsic to the job or (b) required to complete some special work-related errand or trip. The Court of Appeals stated:

> . . . Kansas case law recognizes a distinction between accidents incurred during the normal going and coming from a regular permanent work location and accidents incurred during going and coming in an employment in which the going and coming is an incident of the employment itself.
>
> Under this third qualification to the going and coming rule, injuries incurred while going and coming from places where work-related tasks occur can be compensable where the traveling is (a) intrinsic to the profession or (b) required in order to complete some special work-related errand or special purpose trip in the scope of the employment. This third exception has been noted in several Kansas cases, many of which post-date the 1968 premises and special hazard amendments to the Workers Compensation Act. [10] (Citations omitted.)

In this case, there is no assertion that travel was intrinsic to claimant's job. Furthermore, Mr. Teigen's situation would not be analogous to the special errand exception or the exception where the employees are paid for their travel time or expenses. Claimant was neither instructed to change his clothes nor was he being paid at the time of his accident. The facts in this case are likewise not analogous to the dual purpose doctrine which is predicated on the trip combining both personal and business purposes. The question in this case is not which of these two purposes was claimant engaged in when he was injured, but instead whether obtaining a shirt to wear at work was a business or a personal errand. The Board finds that the purpose of claimant's trip to the voucher store at the time of accident was personal.[11] Therefore, his injury did not arise out of and in the course of his employment with respondent.

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[10] Brobst at 773 and 774.

[11] *See* Squires v. Emporia State University, 23 Kan. App. 2d 325, 929 P.2d 814, *rev. denied* 262 Kan. 963 (1997); Lawson v. City of Kansas City, 22 Kan. App. 2d 507, 918 P.2d 653 (1996).

Based upon the above, claimant has failed to establish that he is entitled to receive workers compensation benefits from respondent and its insurance carrier. Therefore, the Administrative Law Judge's Award denying benefits should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bryce D. Benedict dated December 12, 2001, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2002

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Paul D. Post, Attorney for Claimant
Matthew S. Crowley, Attorney for Claimant
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director